

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MIGUEL NAVARRETE, individually and on behalf of :
others similarly situated, :
:
Plaintiff, : 20-CV-6775 (JMF)
:
-v- : ORDER
:
CRYSTAL DELI INC., et al., :
:
Defendants. :
:
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JESSE M. FURMAN, United States District Judge:

Plaintiff filed this action on August 21, 2020. ECF No. 1. On November 20, 2020, the Court noted that Plaintiff had not yet filed proof of service of the summons and complaint within the 90 days prescribed by Rule 4(m) of the Federal Rules of Civil Procedure, and ordered him to show cause as to why such service was not made. ECF No. 18. On December 7, 2020, in response to a letter seeking an extension of the time in which to serve, the Court granted Plaintiff a *nunc pro tunc* extension of the deadline and ordered him to serve no later than January 21, 2021. ECF No. 20. On January 21, 2020, Plaintiff filed an amended complaint, ECF No. 21, as well as proof of service of that amended complaint on two individuals, ECF Nos. 25 & 26.

To the extent relevant here, Rule 15 gives a party the right to amend its pleading as a matter of course only once, within 21 days of serving that pleading. “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In this case, Plaintiff — who filed his amended complaint well after the 21-day window had expired — did not have either his opposing party’s written consent or leave of Court to file his amended complaint. Nevertheless, because this Court is instructed to allow amendments “freely . . . when justice so requires,” *id.*, the Court GRANTS Plaintiff leave to amend his complaint *nunc pro tunc*. Plaintiff’s amended complaint, ECF No. 21, will be deemed the operative pleading in this case.

The Clerk of Court is directed to update the caption in this case so as to reflect the parties’ names as stated in ECF No. 21.

SO ORDERED.

Dated: January 25, 2021
New York, New York



JESSE M. FURMAN
United States District Judge